

California Regional Water Quality Control Board  
North Coast Region

CLEANUP AND ABATEMENT ORDER No. R1-2008-0068

FOR

Mr. Albert E. Tordjman  
Tordjman Property  
1480 Road B, Miranda

Humboldt County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board), finds that:

1. On May 14, 2008 at approximately 1730 hours, an anonymous spill report was made to the California Department of Fish and Game (DFG) that red diesel was observed on Hacker Creek in Humboldt County. Humboldt County Division of Environmental Health (HCDEH) staff and DFG wardens unsuccessfully attempted to access the area on May 15, 2008. On May 16, 2008, the spill was traced by HCDEH and DFG to a leaking, above-ground storage fuel tank located at 1480 Road B in Miranda, California (hereinafter referred to as the "Site").
2. The Site is owned by Mr. Albert E. Tordjman (APN 221-141-021). Mr. Tordjman is hereinafter referred to as the "Discharger".
3. The red diesel soaked into the ground at the Site and migrated approximately 60 feet into Hacker Creek. The resulting discharge has been estimated at greater than 1,000 gallons and has migrated at least 600 yards downstream from where the diesel entered the Creek. Hacker Creek flows into Salmon Creek, a tributary to the South Fork of the Eel River, and the Eel River.
4. Initial cleanup efforts have been begun by North Coast Environmental Construction (NEC), an emergency spill response contractor, conducting soil excavation and sampling activities in the area of the spill.
5. The existing and potential beneficial uses of the Eel River Hydrologic Unit, include:
  - a) Municipal and Domestic Supply
  - b) Agricultural Supply
  - c) Industrial Service Supply
  - d) Industrial Process Supply
  - e) Groundwater Recharge
  - f) Freshwater Replenishment

- g) Navigation
  - h) Hydropower Generation
  - i) Water Contact Recreation
  - j) Non-Contact Water Recreation
  - k) Commercial and Sport Fishing
  - l) Warm Freshwater Habitat
  - m) Cold Freshwater Habitat
  - n) Wildlife Habitat
  - o) Rare, Threatened, or Endangered Species
  - p) Migration of Aquatic Organisms
  - q) Spawning, Reproduction, and/or Early Development of Fish
  - r) Aquaculture
6. The Discharger has caused or permitted, causes or permits, or threatens to cause or permit waste to be discharged where it is, or probably will be, discharged into waters of the State and creates, or threatens to create, a condition of pollution or nuisance. The discharge and threatened discharge of red diesel may alter the water quality of Hacker Creek, and potentially the water quality of Salmon Creek, to a degree that it unreasonably affects the above-described existing and potential beneficial uses to be protected, which constitutes the definition of pollution under Porter-Cologne Water Quality Control Act, section 13030(l). For example, Hacker Creek is a source of drinking water for residents in the area, and the discharge of red diesel into the creek has interrupted that supply and has created a threat to public health. These conditions threaten to continue unless the discharge or threatened discharge is permanently cleaned up and abated.
7. The Regional Water Board has the authority in a cleanup and abatement order to require the provision of, or payment for, uninterrupted replacement water service to each affected public water supplier or private well owner. No such requirement has been made in this Order, but the requirement may be added, depending on the findings from the sensitive receptor survey, required below.
8. The California Water Code, and regulations and policies developed thereunder, require cleanup and abatement of discharges, and threatened discharges of waste to the extent feasible. Cleanup to background levels is the presumptive standard. Alternative cleanup levels greater than background concentrations shall be permitted only if the Discharger demonstrates that: it is not feasible to attain background levels; the alternative cleanup levels are consistent with the maximum benefit to the people of the State; alternative cleanup levels will not unreasonably affect present and anticipated beneficial uses of such water; and they will not result in water quality less than prescribed in the Basin Plan and Policies adopted by the State and Regional Water Board. Any proposed alternative that will not achieve cleanup to background levels, must be supported with evidence that it is technologically or economically infeasible to achieve background levels, and that the pollutant will not pose a substantial present or potential hazard to human health

or the environment for the duration of the exceedence of background levels (SWRCB Res. Nos. 68-16 and 92-49; California Code of Regulations, title 23, section 2550.4, subds. (c), and (d)).

9. Water quality objectives in the Basin Plan are adopted to ensure protection of the beneficial uses of water. The most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup levels must evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels. Attachment A, attached to and made a part of this Order, sets out the water quality objectives for waters of the State impacted by discharges from the Site.
10. Discharge prohibitions contained in the Basin Plan apply to this discharge. State Water Resources Control Board Resolution 68-16 (Non-Degradation Policy) applies to this discharge. State Water Resources Control Board Resolution 92-49 applies to this discharge and sets out the "Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under section 13304 of the California Water Code."
11. Reasonable costs incurred by Regional Water Board staff in overseeing cleanup or abatement activities are reimbursable under Water Code section 13304(c)(1).
12. Any person affected by this action of the Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If the Discharger choose to appeal the Order, the Discharger are advised that they must comply with the Order while the appeal is being considered. The appeals process is enclosed.
13. The issuance of this cleanup and abatement order is an enforcement action being taken for the protection of the environment and, therefore, is exempt from the provisions of CEQA in accordance with sections 15308 and 15321, title 14 of the California Code of Regulations.
14. This Order requires the Discharger to comply with a monitoring and reporting program because the discharge of red diesel to Hacker Creek and the adjacent soil and/or groundwater came from the Discharger's Site. Monitoring and Reporting

Program R1-2008-0069 is being issued pursuant to California Water Code section 13267, which permits the Regional Water Board to request of any person who has discharged waste within its region to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of the reports must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. Here, because of the current and potentially continuing impacts to water quality and beneficial uses from the discharge of red diesel to Hacker Creek, the need for monitoring of surface and subsurface soil and water/groundwater is necessary to understand the extent of the spill and the potential impacts to water quality and sensitive receptors within the area. The benefits to be obtained from monitoring of the Site and the submittal of the results of that information to the Regional Water Board outweigh the costs and burden of the monitoring and producing the reports.

15. Failure to comply with the terms of this Order may result in enforcement under the Water Code. Any person failing to provide technical reports containing information required by this Order by the required date(s) or falsifying any information in the technical reports is, pursuant to Water Code section 13268, guilty of a misdemeanor and may be subject to administrative civil liabilities of up to one thousand dollars (\$1,000.00) for each day in which the violation occurs. Any person failing to cleanup or abate threatened or actual discharges as required by this Order is, pursuant to Water Code section 13350(e), subject to administrative civil liabilities of up to five thousand dollars (\$5,000.00) per day or ten dollars (\$10) per gallon of waste discharged.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to California Water Code sections 13267(b) and 13304, the Discharger shall cleanup and abate the discharge and threatened discharges forthwith and shall comply with the following provisions of this Order:

1. Conduct all work under the direction of a California registered civil engineer or professional geologist experienced in surface water, soil, and groundwater investigation and remediation.
2. Coordinate investigation and cleanup activities associated with surface waters, soils, and groundwater with Regional Water Board staff, Humboldt County Environmental Health staff, the California Department of Fish and Game, and other regulatory agencies involved in the cleanup. All workplans and reports submitted to the Executive Officer of the Regional Water Board shall be signed and stamped by a licensed professional as specified in Provision 1, above.
3. Comply with the provisions of Monitoring and Reporting Program No. R1-2008-0069 and subsequent revisions thereof.

4. Remove contaminated soil to the extent feasible. In the area of the spill, characterize the extent of soil contamination. Contain, cleanup or remove contaminated waters to the extent feasible. The initial report of cleanup activities shall be submitted to the Executive Officer by May 30, 2008, and every two weeks thereafter until activities are completed, or until the Executive Officer modifies the reporting schedule. The initial report of cleanup activities shall include analytical results for soil and water samples collected after the spill, but before May 27, 2008. The volume of contaminated soils and the disposition of excavated material shall be documented in the report.
5. Submit to the Executive Officer a workplan to define the horizontal and vertical extent of soil, groundwater and surface water contamination by June 15, 2008.
6. Implement the workplan(s) to characterize the horizontal and vertical extent of contamination in soils, groundwater, and surface water within 30 days of the Executive Officer's concurrence with the workplan.
7. Submit to the Executive Officer a feasibility study/remedial action plan by October 1, 2008.
8. Implement the feasibility study/remedial action plan within 45 days of the Executive Officer's concurrence with the feasibility study/remedial action plan.
9. Conduct a sensitive receptor survey to encompass the known extent of discharge extending approximately one mile downstream of the Site. The sensitive receptor survey must include, at a minimum, locations of water supply wells, water intake structures in the creek, preferential pathways, sensitive environmental habitats, and the identification of any potential health and safety issues. Any actions taken to remediate the impacts of the spill on the sensitive receptors, including providing alternative water supplies, and/or maintenance or repair of drinking water systems must be included in the sensitive receptor report. A preliminary sensitive receptor report that identifies the impacts and any corrective actions to address downstream domestic water supplies and any health and safety issues shall be submitted to the Executive Officer by June 6, 2008. The final report addressing all sensitive receptors shall be submitted to the Executive Officer by June 30, 2008.
10. If, for any reason, the Discharger is unable to perform any activity or submit any documentation in compliance with the directives contained in this order or submitted pursuant to this order and approved by the Executive Officer, the Discharger may request in writing, an extension of time. The extension request must be submitted five days in advance, if possible, of the due date and shall include justification for this delay, including demonstration of the good faith effort performed to achieve compliance with the due date. The extension request shall also include a proposed time schedule with new performance dates for the due date in question and all subsequent dates dependent on the extension. A written

extension may be granted for good cause, in which case the order will be revised accordingly.

11. This Order in no way limits the authority of this Regional Water Board to institute additional enforcement actions or to require additional investigation and cleanup at the site consistent with state and federal law. This Order may be revised by the Executive Officer as additional information becomes available.

Ordered by: \_\_\_\_\_  
Catherine Kuhlman  
Executive Officer

May 23, 2008

## *Attachment A*

### **Groundwater Water Quality Objectives**

Constituent of Concern	Practical Quantitation Limit ug/l	Water Quality Objective <sup>1</sup> ug/l
Gasoline	<50	5.0 <sup>a</sup>
Diesel	<50	100 <sup>a</sup>
Benzene	<0.5	0.15 <sup>b</sup>
Toluene	<0.5	42 <sup>c</sup>
Xylene	<0.5	17 <sup>c</sup>
Ethylbenzene	<0.5	29 <sup>c</sup>
Methyl-tertiary butyl ether (MTBE)	<0.5	5.0 <sup>d</sup>
Motor Oil	<175	None Available

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<sup>1</sup> Practical quantitation limits are based on current technology. For instances where technology cannot achieve the water quality objective the practical quantitation limit will be used

<sup>a</sup> Published literature provides a taste and odor threshold which is applied to the narrative TASTE and ODOR water quality objective of the Basin Plan.

<sup>b</sup> California Public Health Goal or PHG

<sup>c</sup> US EPA Secondary MCLs provide a taste and odor threshold which is applied to the narrative TASTE and ODOR water quality objective of the Basin Plan.

<sup>d</sup> California Department of Health Services Secondary MCL (taste & odor or welfare-based)